

1 KEVIN A. DARBY, NVSB# 7670  
2 TRICIA M. DARBY, NVSB# 7959  
3 DARBY LAW PRACTICE, LTD.  
4 499 W. Plumb Lane, Suite 202  
5 Reno, Nevada 89509  
6 Telephone: (775) 322-1237  
7 Facsimile: (775) 996-7290  
8 E-mail: kevin@darbylawpractice.com  
9 tricia@darbylawpractice.com  
10 Counsel for Debtor and Debtor in Possession

11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**UNITED STATES BANKRUPTCY COURT**  
**DISTRICT OF NEVADA**

In re:

CASE NO.: BK-N-24-50300-hlb  
Chapter 11 – Subchapter V

BREITMEYER FABRICATIONS, INC.,

Debtor.

**MOTION FOR ORDER COMPELLING  
TURNOVER OF PROPERTY OF THE  
ESTATE**

Hearing Date: October 2, 2024  
Hearing Time: 2:30 p.m.

Debtor and debtor in possession, BREITMEYER FABRICATIONS, INC. (“Debtor”), by and through its counsel of record, Kevin A. Darby, Esq. of Darby Law Practice, Ltd., hereby seeks an order of this Court compelling MICHAEL K. MONAHAN (“Monahan”) to turnover property of Debtor’s bankruptcy estate as detailed herein (the “Motion”). This Motion is made pursuant to 11 U.S.C. §§105, 362, 541 and 542, is supported by the Declarations of Martin W. Breitmeyer III (the “Breitmeyer Declaration”) and Kevin A. Darby, Esq. (the “Darby Declaration”), and is based on the following points and authorities.

**POINTS AND AUTHORITIES**

**I. INTRODUCTION**

Monahan is in possession and control of various equipment and machinery owned by the Debtor, which is identified on Exhibit 1 hereto as those items that do not have \*\*\*\* next to the equipment asset number (the “Equipment”). The Equipment was left in Debtor’s former leased

1 premises when Debtor vacated it shortly before the bankruptcy case was filed. Monahan is Debtor's  
2 former landlord and remains in possession and control of the Equipment. The Equipment constitutes  
3 property of the Debtor's bankruptcy estate and must be turned over by Monahan to Debtor as a  
4 debtor in possession. Debtor, through Counsel, has made demand for Monahan to return the  
5 Equipment to Debtor, but Monahan has failed to do so. As more fully detailed below, this Court  
6 should enter an order compelling Monahan to immediately turnover and/or surrender to Debtor all  
7 Equipment in his possession that constitutes property of the bankruptcy estate, including, but not  
8 limited to, the Equipment listed in Exhibit 1.

## 9 II. FACTUAL BACKGROUND

10 1. Debtor, a Nevada corporation, operates a machine shop in Reno, Nevada, focusing  
11 on hydraulic equipment repair and fabrication work.

12 2. In September 2021, Debtor's principal, Martin W. Breitmeyer III ("Breitmeyer")  
13 entered into a Stock Purchase Agreement pursuant to which he purchased an existing machine shop  
14 business from Monahan, including the Equipment, as defined above and listed in Exhibit 1 hereto.  
15 *Breitmeyer Declaration*, ¶3. All Equipment, other assets and rights acquired from Monahan were  
16 transferred to Debtor. *Id.*

17 3. At the time the business was purchased, Breitmeyer entered into a Commercial Real  
18 Estate Lease with Option to Purchase with Monahan, pursuant to which Breitmeyer leased a 17,000  
19 square foot building with offices and a yard located at 1615 Marietta Way, Sparks, Nevada 89431  
20 (the "Leased Premises"). *Breitmeyer Declaration*, ¶ 4. Debtor previously operated its business at  
21 the Leased Premises.

22 4. Pre-petition, Monahan agreed to terminate the lease and Debtor vacated the Leased  
23 Premises and removed some of its equipment and machinery. However, the Equipment was not  
24 removed and, to the best of Debtor's knowledge, remains at the Leased Premises. *Breitmeyer*  
25 *Declaration*, ¶ 5.

26 5. On March 28, 2024, Debtor filed a voluntary petition under Chapter 11 of the  
27 Bankruptcy Code (the "Petition Date"), on which it designated this case as a Subchapter V small  
28 business case. Debtor is a debtor and debtor in possession pursuant to Sections 1182(2) and 1184

1 of the Bankruptcy Code.

2 6. On May 15, 2024, Debtor's Counsel sent a letter to Monahan demanding the  
3 turnover of the Equipment to Debtor. *Darby Declaration*, ¶ 2 and Exhibit 1 thereto.

4 7. On May 21, 2024, Monahan contacted Debtor's Counsel confirming he received  
5 the May 15, 2024 letter. *Darby Declaration*, ¶ 3.

6 8. On May 25, 2024, Monahan informed Debtor's Counsel that he disputed that some  
7 of the Equipment is owned by the Debtor, but he has never identified the items in dispute. *Darby*  
8 *Declaration*, ¶ 4.

9 9. As of the date of this Motion, Monahan has refused and failed to comply with the  
10 provision of the Bankruptcy Code and to surrender all Equipment to the Debtor and its bankruptcy  
11 estate.

### 12 III. LEGAL DISCUSSION

#### 13 A. Monahan should be compelled to turnover and transfer the Equipment to Debtor.

14 Pursuant to 11 U.S.C. §541 all property owned by the Debtor on the Petition Date became  
15 property of a bankruptcy estate subject to the jurisdiction of this Court and the protections of the  
16 Bankruptcy Code. Section 542(a) of the Code provides that any person or entity in possession or  
17 control of property of the estate shall deliver such property to the estate and account for the property  
18 or the value of the property.

19 In this case, the Equipment constitutes property of Debtor's bankruptcy estate. Monahan is  
20 in possession of the Equipment and, in turn, he is in possession of property of Debtor's bankruptcy  
21 estate. Pursuant to 11 U.S.C. §542(a), Monahan must turnover the Equipment to the Debtor.  
22 Monahan has refused and failed to do so. Therefore, it has become necessary for this Court to enter  
23 an order compelling Monahan to surrender the Equipment to the Debtor by making all Equipment  
24 available to be picked up by Debtor or its chosen agent(s).

25 ///

26 ///

27 ///

1 **IV. CONCLUSION**

2 Based on the foregoing, this Court should enter an order compelling Monahan to immediately  
3 surrender all Equipment to Debtor and awarding any such other relief this Court deems to be  
4 appropriate or necessary.

5 DATED this 28th day of August, 2024.

6 DARBY LAW PRACTICE, LTD.

7 */s/ Kevin A. Darby*

8 By: \_\_\_\_\_  
9 KEVIN A. DARBY, ESQ.  
Attorney for Debtor